

15 between the interior-facing surface of the plug part and the interior surface of the vial neck. This feature of Applicants' Claim was present before Applicants' March 16, 2009, Amendment. Thus, Applicants' March 16, 2009, Amendment did not change anything relative to the application of the newly applied reference.

Accordingly, Applicants' Amendment did not necessitate application of the new reference. To the extent that the Patent Office believed that the newly applied reference was relevant to the claims, it should have been applied in the first action. As it was not, the present application of the reference should not be made final. Applicants should have the chance for typical prosecution of the issue.

Further, while the December 19, 2008, Office action stated literally that Claims 14 and 15 were anticipated over Amschlinger in heading 2. on page 2 of the Office action, there was no discussion of how Amschlinger allegedly anticipates Claims 14 or 15. Under 37 CFR § 1.104, in rejecting claims, "[t]he pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified". As there was no explanation of how the previously cited Amschlinger reference allegedly anticipated Claims 14-15, there really was no prior rejection of these claims in a substantive sense. Indeed, there is no argument as to whether Amschlinger anticipates these claims, it does not (and this rejection was not continued).

Thus, the present rejection of Claims 14-15 in view of Liebert is truly the first rejection of the claims. Claims should not be finally rejected on a first Office action concerning those claims. Under MPEP § 706 "[t]he goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity." Making an action final upon the first true refusal of a claim does not meet that goal.

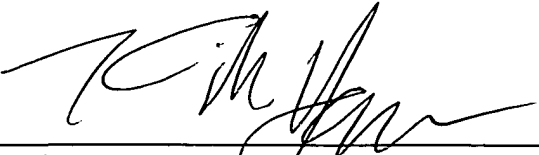
In view of the forgoing, Applicants respectfully request that the Patent Office withdraw the finality of the June 23, 2009, Office action.

Respectfully submitted,

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